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In re Application of :
Lu et al. : DECISION ON PETITION TO
Application Number: 10/683880 : WITHDRAW HOLDING OF
Filing Date: 10/09/2003 : ABANDONMENT
Attorney Docket Number: BIZ- :
045CPCN :

This is a decision on the "PETITION FOR WITHDRAWAL OF HOLDING OF ABANDONMENT UNDER 37 C.F.R. 1.181(a)," filed on January 28, 2008.

A Notice of Abandonment was mailed on January 3, 2008, stating that the application was abandoned for failure to timely file a proper reply to the final Office action mailed on June 20, 2007.

Petitioners aver that the Office issued the Notice of Abandonment in error because applicant filed a timely and proper reply to the final Office action of June 20, 2007. Specifically, petitioners assert that they timely filed a Notice of Appeal and a three (3) month extension of time on December 20, 2007.

A review of the record reveals that a Notice of Appeal and three (3) month extension of time filed on December 20, 2007, are located therein.

Accordingly, petitioners have established that they submitted a timely reply to the final Office action in the form of a Notice of Appeal and a three (3)-month extension of time on December 20, 2007. **Therefore, the Office reminds applicant that the two (2)-month extendable period to file an appeal brief in compliance with 37 CFR 41.37, accompanied by the fee required by law, began to run on December 20, 2007, the date of filing the Notice of Appeal.** The Office notes that "37 CFR 41.37(a) does not permit the brief to be filed within the time allowed for reply to the action from which the appeal was taken even if such time is later." *MPEP 1205*. "Once appellant timely files a notice of appeal in compliance with 37 CFR 41.31, the time period for reply set forth in the last Office action is tolled and is no longer relevant for the time period for filing an appeal brief." *Id.*

Therefore, applicant is required to submit an appeal brief on or before July 20, 2008, accompanied by a request for an extension of time for response within the fifth month and fee to avoid abandonment of this application. In other words, applicant, himself, started the running of the two-month extendable period to file an appeal brief based upon the date applicant originally submitted the Notice of Appeal with the USPTO.

The petition is granted to the extent indicate above.

The holding of abandonment is withdrawn and the application is restored to pending status.

This matter is being referred to Technology Center Art Unit 1643 to await the filing of an appeal brief within the period noted above.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3231.



Douglas I. Wood
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Office of Petitions